

New York State Department of Environmental Conservation
Division of Management & Budget Services, 10th Floor
625 Broadway, Albany, New York 12233-5010
Phone: (518) 402-9228 • **Fax:** (518) 402-9023
Website: www.dec.ny.gov



Ms. Judith Enck
Regional Administrator
U.S. Environmental Protection Agency
Region II Office
290 Broadway
New York, New York 10007-1866

OCT 15 2012

Attention: Mr. Roch Baamonde, Chief
Grants & Contract Management Branch


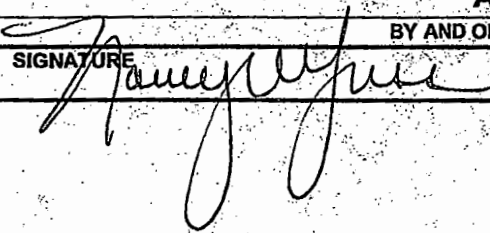
Re: New York Clean Water State Revolving Fund
Capitalization Grant CS36000112
Amendment No. 1

Dear Ms. Enck:

I am pleased to accept Amendment No. 1 to the Federal Fiscal Year (FFY) 2012 Capitalization Grant for the New York State Clean Water State Revolving Fund (CWSRF). This amendment adds \$1,204,222 in 2012 Construction Grant Reserve Funds, and thus raises the federal funds from \$156,001,000 to \$157,205,222. These monies will enable the financing of additional water quality protection projects.

While I have executed the 2012 Grant Agreement Amendment No. 1 and confirm our acceptance, I would like to reiterate the requested modifications to the grant conditions that were included in my August 3, 2012 Capitalization Grant acceptance letter:

- *"The Project Manager should be identified as:*
 - *Timothy P. Burns, P.E.*
625 Broadway
Albany, NY 12207-2997
timothy.burns@efc.ny.gov
(518) 402-7396
- *The requirements presented in Section 1 of the Administrative Conditions, "Utilization of Small, Minority, and Women's Business Enterprises", apply only to projects assisted with funds made available by the Capitalization Grant. Please refer to EPA memos SRF-98-05 (1/20/98) and SRF-99-03 (11/5/98). Also, under the sub-heading titled "Current Fair Share Objective/Goal (for NYSDEC Agreements)", the parenthetical phrase (for NYSDEC Agreements) should be deleted."*

	U.S. ENVIRONMENTAL PROTECTION AGENCY Assistance Amendment	GRANT NUMBER (FAIN): 36000112		DATE OF AWARD 09/25/2012
		MODIFICATION NUMBER: 1		MAILING DATE 10/02/2012
		PROGRAM CODE: CS		
		TYPE OF ACTION Augmentation: Increase		PAYMENT METHOD: Advance
RECIPIENT TYPE: State		Send Payment Request to: EPA, Las Vegas Finance Center		
RECIPIENT: NYS Dept of Environmental Conservation 625 Broadway Albany, NY 12233-5010 EIN: 14-6013200		PAYEE: NYS Dept of Environmental Conservation 625 Broadway Albany, NY 12233-5010		
PROJECT MANAGER Michael Giovannone 625 Broadway Albany, NY 12233-5010 E-Mail: "Michael Giovannone" <mxgiovann@gw.dec.state.ny.us> Phone: 518-402-9376		EPA PROJECT OFFICER Jane Leu 290 Broadway, CWD/DO New York, NY 10007-1866 E-Mail: Leu.Jane@epamail.epa.gov Phone: 212-637-3815		EPA GRANT SPECIALIST Yvette MarCardona Grants and Audit Mgt Branch, OPM/GAMB E-Mail: MarCardona.Yvette@epa.gov Phone: 212-637-3409
PROJECT TITLE AND EXPLANATION OF CHANGES NYSDEC-CWSRF SUPPLEMENTAL FUNDING This amendment increases the federal share of the agreement by \$1,204,222 from \$156,001,000 to \$157,205,222; this action further revises the approved recipient share to \$31,441,044. This action is taken in accordance with Governor Cuomo's request, dated June 22, 2011, to transfer Construction Grant Reserve Funds which have become available thru dispute settlements, to the Clean Water State Revolving Fund. Administrative Conditions Nos. 2, 5, 9, 13, 14 and 16 are revised and Programmatic Condition No. 1 has been revised and No. 16 has been added. All other Administrative and Programmatic Conditions remain in effect.				
BUDGET PERIOD 10/01/2011 - 09/30/2018	PROJECT PERIOD 10/01/2011 - 09/30/2018	TOTAL BUDGET PERIOD COST \$188,646,266.00	TOTAL PROJECT PERIOD COST \$188,646,266.00	
NOTICE OF AWARD				
Based on your application dated 09/11/2012, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$1,204,222. EPA agrees to cost-share 83.33% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$157,205,222. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.				
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE		
ORGANIZATION / ADDRESS Grants and Audit Management Branch 290 Broadway, 27th Floor New York, NY 10007-1866		ORGANIZATION / ADDRESS U.S. EPA, Region 2 Clean Water Division 290 Broadway New York, NY 10007-1866		
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY				
Digital signature applied by EPA Award Official Donna J. Vizian - Assistant Regional Administrator for Policy and Management				DATE 09/25/2012
AFFIRMATION OF AWARD				
BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION				
SIGNATURE 	TYPED NAME AND TITLE Joseph Martens, Commissioner			DATE 10/15/12

CS - 36000112 - 1 Page 2

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$ 156,001,000	\$ 1,204,222	\$ 157,205,222
EPA In-Kind Amount	\$ 0	\$	\$ 0
Unexpended Prior Year Balance	\$ 0	\$	\$ 0
Other Federal Funds	\$ 0	\$	\$ 0
Recipient Contribution	\$ 0	\$	\$ 0
State Contribution	\$ 31,200,200	\$ 240,844	\$ 31,441,044
Local Contribution	\$ 0	\$	\$ 0
Other Contribution	\$ 0	\$	\$ 0
Allowable Project Cost	\$ 187,201,200	\$ 1,445,066	\$ 188,646,266

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.458 - Capitalization Grants for State Revolving Fund	Clean Water Act: Secs. 205(m) 601-607	40 CFR PTS 31 & 35 SUBPRT K

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
	1202HE0540	11	E2D	022	202B80	4111	11CA		1,204,222
									1,204,222



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

VIA E MAIL

Agreement No. CS36000112
Amendment No. 1

October 3, 2012

Joseph Martens, Commissioner
NYS Department of Environmental Conservation
625 Broadway
Albany, NY 12233-5010

Attention: Federal Grants

Subject: FY2012 NYS CWSRF Increase

Dear Commissioner Martens:

I am pleased to attach Amendment No. 1 to the above-referenced agreement. This amendment increases the federal share of the agreement by \$1,204,222 from \$156,001,000 to \$157,205,222; this action further revises the approved recipient share to \$31,441,044. This action is taken in accordance with Governor Cuomo's request, dated June 22, 2011, to transfer Construction Grant Reserve Funds which have become available thru dispute settlements, to the Clean Water State Revolving Fund. Administrative Conditions Nos. 2, 5, 9, 13, 14 and 16 are revised; and Programmatic Condition No. 1 has been revised and No. 16 has been added. All other Administrative and Programmatic Conditions remain in effect. Please note that this agreement reflects our recent reorganization: the Grants and Audit Management Branch now manages assistance agreements.

In addition, the Final Federal Fiscal Year 2012 Intended Use Plan (IUP), Amendment No. 1 (issued August 2012), and Project Priority List (PPL) are approved. In addition, particular attention should be given to Programmatic Condition No. 16 which requires that the Draft Federal Fiscal Year 2013 IUP be amended to include the additional reprogrammed Construction Grants (CG) Funds made available under this amendment.

Please print two copies of the attached agreement in its entirety, sign and date them, retain one for your files and return one to this office. Completed documents must be returned within three calendar weeks of receipt, or within any extension of time as may be granted by the U.S. Environmental Protection Agency.

You have the option of either emailing your signed agreement to Region2_GrantApplicationBox@epa.gov or mailing it to:

Roch Baamonde, Chief
Grants & Audit Management Branch
U.S. EPA Region 2
290 Broadway, 27th Floor
New York, NY 10007

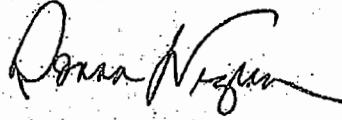
All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot be accepted. Also, be advised that any electronic submissions exceeding 15 Megabytes must be mailed.

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 50% Postconsumer content)

We look forward to an early acceptance.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna Vizian", with a stylized flourish at the end.

Donna J. Vizian
Assistant Regional Administrator
for Policy and Management

Attachment

Cc: Nancy Lussier, NYSDEC
Timothy Burns, NYSDEC
Jane Leu, USEPA/DEPP

Budget Summary Page

Table A - Object Class Category (Non-construction)		Total Approved Allowable Budget Period Cost
1. Personnel		\$461,129
2. Fringe Benefits		\$199,530
3. Travel		\$0
4. Equipment		\$0
5. Supplies		\$0
6. Contractual		\$0
7. Construction		\$0
8. Other		\$187,837,876
9. Total Direct Charges		\$188,498,535
10. Indirect Costs: % Base		\$147,731
11. Total (Share: Recipient 16.67 % Federal 83.33 %)		\$188,646,266
12. Total Approved Assistance Amount		\$157,205,222
13. Program Income		\$0
14. Total EPA Amount Awarded This Action		\$1,204,222
15. Total EPA Amount Awarded To Date		\$157,205,222

Administrative Conditions

All Administrative Conditions Remain the Same with the following exceptions:

Administrative Conditions Nos. 2, 5, 9, 13, 14 and 16 are revised to reflect the following:

2. FEDERAL FINANCIAL REPORTS/GRANT CLOSEOUT

A) Interim Federal Financial Reports (FFRs)

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit an interim annual Federal Financial Report (SF-425) to EPA no later than 90 calendar days following the anniversary of the start date of the agreement. The FFR must be faxed to the Las Vegas Finance Office at 702-798-2423, emailed to LVFC-grants@epa.gov, or sent to the address below. A courtesy copy of the interim FFR can be submitted to the Grants and Audit Management Branch using one of the following options: email to Region2_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

B) Final Federal Financial Report

At the end of the project, the recipient must submit a final Federal Financial Report to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at <http://www.epa.gov/ocfo/finservices/forms.htm>. All FFRs must be submitted to the Las Vegas Finance Center:

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119

or by email: LVFC-grants@epa.gov or Fax to: 702-798-2423. All email attachments must be sent in pdf format.

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 30.62 if the recipient does not comply with this term and condition.

C) Closeout

The Administrative Closeout Phase for this grant will be initiated with the submission of a "final" FFR. At that time, the recipient must submit the following forms/reports to the EPA Region 2 Grants and Audit Management Branch, if applicable:

- Federally Owned Property Report
- An Inventory of all Property Acquired with federal funds
- Contractor's or Grantee's Invention Disclosure Report (EPA Form 3340-3)

Additionally, the recipient's Final Request for Payment should be submitted to the LVFC.

5. EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE

If a no cost time extension is necessary to extend the period of availability of funds (budget period), the recipient must submit a written request, including a justification as to why additional time is needed and an estimated date of completion to the EPA prior to the budget/project period expiration dates. The extension request should be submitted to the EPA, Grants and Audit Management Branch using one of the following options: email to Region2_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York,

NY 10007. An interim FFR (SF-425) covering all expenditures and obligations to date, must be emailed or faxed to the Las Vegas Finance Office at LVFC-grants@epa.gov or 702-798-2423 or sent to the address below. To expedite processing of your request, please submit a courtesy copy of the interim FFR to the Grants and Audit Management Branch along with your extension request. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119

or by Fax to: 702-798-2423

9. SUSPENSION AND DEBARMENT

Recipients shall fully comply with Subpart C of 2 CFR Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business With Other Persons," as implemented and supplemented by 2 CFR Part 1532. Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipients may access suspension and debarment information at <http://www.sam.gov>. This system allows recipients to perform searches determining whether an entity or individual is excluded from receiving Federal assistance. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

13. DUNS AND CCR REQUIREMENTS

Central Contractor Registration and Universal Identifier Requirements.

A. Requirement for Central Contractor Registration (CCR). Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely

identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3. Entity as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

- a. A Governmental organization, which is a State, local government, or Indian tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;
- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. -.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the

subaward

14. SUBAWARD REPORTING AND COMPENSATION

I. Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to www.fsrs.gov.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if --

i. the total Federal funding authorized to date under this award is \$25,000 or more;

ii. in the preceding fiscal year, you received--

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration Central Contractor Registration/System for Award Management profile available at www.sam.gov.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if --

i. in the subrecipient's preceding fiscal year, the subrecipient received--

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward.

For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

1. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization;
- iv. A domestic or foreign for-profit organization;
- v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

- i. Receives a subaward from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. *Salary and bonus*
- ii. *Awards of stock, stock options, and stock appreciation rights*. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. *Earnings for services under non-equity incentive plans*. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. *Change in pension value*. This is the change in present value of defined benefit and actuarial pension plans.
- v. *Above-market earnings on deferred compensation which is not tax-qualified*
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the

employee, perquisites or property) for the executive exceeds \$10,000.

16. ADVANCE METHOD OF PAYMENT

In accordance with EPA regulations, the recipient is authorized to receive advance payments under this agreement, provided that the recipient takes action to minimize the time elapsing between the transfer of funds from EPA and the disbursement of those funds. The recipient shall request Federal payments by completing the EPA Payment Requests Form (EPA Form 190-F-04-001) and faxing it to the Las Vegas Finance Center at 702-798-2423, or by email: LVFC-grants@epa.gov. This form can be found at www.epa.gov/ogd/forms/forms.htm.

Programmatic Conditions

All Programmatic Conditions to the original award, CS36000112-0, remain in effect with the following exceptions:

Programmatic Condition No. 1 is expanded as follows:

1. AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP)

The New York State Department of Environmental Conservation (NYSDEC), acting on behalf of the State of New York, agrees to accept payment from the United States Environmental Protection Agency (EPA) with funds to be made available from the FY 2012 Title VI allotment pursuant to the Clean Water Act, as amended, (the Act), in accordance with the below payment schedule established under Section 601(b) of the Act and will deposit all such payments into the State Revolving Fund (SRF) in accordance with Title VI. Payments, cash draws and disbursements are defined and in accordance with the Initial Guidance for the State Revolving Fund pursuant to 40 CFR Part 35 Subpart K and the Operating Agreement.

As per EPA's publication, EPA 430/09-88-009, dated July 1988, entitled, "Letter of Credit, How is it Used in EPA's State Revolving Fund Program", a payment in the SRF Program is an action by EPA to increase the amount of funds available for cash draw in the Letter of Credit (i.e. the ceiling). Through a payment, the EPA makes funds available to the State up to the amount of the capitalization grant. A payment is not a transfer of cash to the State but only an authorization making funds available for transfer to the State when a cash draw request is submitted. A payment schedule, indicating the timing and size of the payment or payments to be made will be entered into between EPA and the State. It will be based on the State's projection of binding commitments, the rules for cash draws and the use of the funds.

In consideration of the above, payment from the ASAP shall be made in accordance with the following schedule. Future cash draws may not exceed the amount shown below:

\$1,204,222 (projects) September, 2012*

*** Upon receipt and acceptance of Grant Agreement.**

Programmatic Condition No. 16 is added to your agreement:

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16. FFY 2013 INTENDED USE PLAN

The Draft Federal Fiscal Year 2013 New York State Clean Water State Revolving Fund (CWSRF) for Water Pollution Control Intended Use Plan (IUP) must be amended to include the additional reprogrammed Construction Grants (CG) Funds made available under this amendment.

NOTE: Programmatic Condition No.14 entitled "Amended Intended Use Plan," has been satisfied.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

VIA E MAIL

Agreement No. CS36000112
Amendment No. 1

October 3, 2012

Joseph Martens, Commissioner
NYS Department of Environmental Conservation
625 Broadway
Albany, NY 12233-5010

Attention: Federal Grants

Subject: FY2012 NYS CWSRF Increase

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Roch Baamonde, Chief
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We look forward to an early acceptance.


Sincerely,

A handwritten signature in black ink, appearing to read "Donna J. Vizian", with a stylized, flowing script.

Donna J. Vizian
Assistant Regional Administrator
for Policy and Management

Attachment

Cc: Nancy Lussier, NYSDEC
Timothy Burns, NYSDEC
Jane Leu, USEPA/DEPP

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			PAYMENT METHOD: Advance		ACH# 20040		
RECIPIENT TYPE: State			Send Payment Request to: EPA, Las Vegas Finance Center				
RECIPIENT: NYS Dept of Environmental Conservation 625 Broadway Albany, NY 12233-5010 EIN: 14-6013200			PAYEE: NYS Dept of Environmental Conservation 625 Broadway Albany, NY 12233-5010				
PROJECT MANAGER Michael Giovannone 625 Broadway Albany, NY 12233-5010 E-Mail: "Michael Giovannone" <mxgiovannone@gw.dec.state.ny.us> Phone: 518-402-9376		EPA PROJECT OFFICER Jane Leu 290 Broadway, CWD/DO New York, NY 10007-1866 E-Mail: Leu.Jane@epamail.epa.gov Phone: 212-637-3815		EPA GRANT SPECIALIST Yvette MarCardona Grants and Audit Mgt Branch, OPM/GAMB E-Mail: MarCardona.Yvette@epa.gov Phone: 212-637-3409			
PROJECT TITLE AND EXPLANATION OF CHANGES NYSDEC-CWSRF SUPPLEMENTAL FUNDING This amendment increases the federal share of the agreement by \$1,204,222 from \$156,001,000 to \$157,205,222; this action further revises the approved recipient share to \$31,441,044. This action is taken in accordance with Governor Cuomo's request, dated June 22, 2011, to transfer Construction Grant Reserve Funds which have become available thru dispute settlements, to the Clean Water State Revolving Fund. Administrative Conditions Nos. 2, 5, 9, 13, 14 and 16 are revised and Programmatic Condition No. 1 has been revised and No. 16 has been added. All other Administrative and Programmatic Conditions remain in effect.							
BUDGET PERIOD 10/01/2011 - 09/30/2018		PROJECT PERIOD 10/01/2011 - 09/30/2018		TOTAL BUDGET PERIOD COST \$188,646,266.00	TOTAL PROJECT PERIOD COST \$188,646,266.00		
NOTICE OF AWARD Based on your application dated 09/11/2012, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$1,204,222. EPA agrees to cost-share 83.33% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$157,205,222. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.							
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)			AWARD APPROVAL OFFICE				
ORGANIZATION / ADDRESS Grants and Audit Management Branch 290 Broadway, 27th Floor New York, NY 10007-1866			ORGANIZATION / ADDRESS U.S. EPA, Region 2 Clean Water Division 290 Broadway New York, NY 10007-1866				
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY							
Digital signature applied by EPA Award Official Donna J. Vizian - Assistant Regional Administrator for Policy and Management					DATE 09/25/2012		
AFFIRMATION OF AWARD							
BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION							
SIGNATURE		TYPED NAME AND TITLE Joseph Martens, Commissioner			DATE		

CS - 36000112 - 1 Page 2

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$ 156,001,000	\$ 1,204,222	\$ 157,205,222
EPA In-Kind Amount	\$ 0	\$	\$ 0
Unexpended Prior Year Balance	\$ 0	\$	\$ 0
Other Federal Funds	\$ 0	\$	\$ 0
Recipient Contribution	\$ 0	\$	\$ 0
State Contribution	\$ 31,200,200	\$ 240,844	\$ 31,441,044
Local Contribution	\$ 0	\$	\$ 0
Other Contribution	\$ 0	\$	\$ 0
Allowable Project Cost	\$ 187,201,200	\$ 1,445,066	\$ 188,646,266

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.458 - Capitalization Grants for State Revolving Fund	Clean Water Act: Secs. 205(m) 601-607	40 CFR PTS 31 & 35 SUBPRT K

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
	1202HE0540	11	E2D	022	202B80	4111	11CA		1,204,222
									1,204,222

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$461,129
2. Fringe Benefits	\$199,530
3. Travel	\$0
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$0
7. Construction	\$0
8. Other	\$187,837,876
9. Total Direct Charges	\$188,498,535
10. Indirect Costs: % Base	\$147,731
11. Total (Share: Recipient <u>16.67</u> % Federal <u>83.33</u> %)	\$188,646,266
12. Total Approved Assistance Amount	\$157,205,222
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$1,204,222
15. Total EPA Amount Awarded To Date	\$157,205,222

Administrative Conditions

All Administrative Conditions Remain the Same with the following exceptions:

Administrative Conditions Nos. 2, 5, 9, 13, 14 and 16 are revised to reflect the following:

2. FEDERAL FINANCIAL REPORTS/GRANT CLOSEOUT

A) Interim Federal Financial Reports (FFRs)

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit an interim annual Federal Financial Report (SF-425) to EPA no later than 90 calendar days following the anniversary of the start date of the agreement. The FFR must be faxed to the Las Vegas Finance Office at 702-798-2423, emailed to LVFC-grants@epa.gov, or sent to the address below. A courtesy copy of the interim FFR can be submitted to the Grants and Audit Management Branch using one of the following options: email to Region2_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

B) Final Federal Financial Report

At the end of the project, the recipient must submit a final Federal Financial Report to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at <http://www.epa.gov/ocfo/finservices/forms.htm>. All FFRs must be submitted to the Las Vegas Finance Center:

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119

or by email: LVFC-grants@epa.gov or Fax to: 702-798-2423. All email attachments must be sent in pdf format.

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 30.62 if the recipient does not comply with this term and condition.

C) Closeout

The Administrative Closeout Phase for this grant will be initiated with the submission of a "final" FFR. At that time, the recipient must submit the following forms/reports to the EPA Region 2 Grants and Audit Management Branch, if applicable:

- Federally Owned Property Report
- An Inventory of all Property Acquired with federal funds
- Contractor's or Grantee's Invention Disclosure Report (EPA Form 3340-3)

Additionally, the recipient's Final Request for Payment should be submitted to the LVFC.

5. EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE

If a no cost time extension is necessary to extend the period of availability of funds (budget period), the recipient must submit a written request, including a justification as to why additional time is needed and an estimated date of completion to the EPA prior to the budget/project period expiration dates. The extension request should be submitted to the EPA, Grants and Audit Management Branch using one of the following options: email to Region2_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York,

NY 10007. An interim FFR (SF-425) covering all expenditures and obligations to date, must be emailed or faxed to the Las Vegas Finance Office at LVFC-grants@epa.gov or 702-798-2423 or sent to the address below. To expedite processing of your request, please submit a courtesy copy of the interim FFR to the Grants and Audit Management Branch along with your extension request. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119

or by Fax to: 702-798-2423

9. SUSPENSION AND DEBARMENT

Recipients shall fully comply with Subpart C of 2 CFR Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business With Other Persons," as implemented and supplemented by 2 CFR Part 1532. Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipients may access suspension and debarment information at <http://www.sam.gov>. This system allows recipients to perform searches determining whether an entity or individual is excluded from receiving Federal assistance. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

13. DUNS AND CCR REQUIREMENTS

Central Contractor Registration and Universal Identifier Requirements.

A. Requirement for Central Contractor Registration (CCR). Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely

identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3. Entity as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

- a. A Governmental organization, which is a State, local government, or Indian tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;
- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward

14. SUBAWARD REPORTING AND COMPENSATION

I. Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e of this award term).
2. Where and when to report.
 - i. You must report each obligating action described in paragraph a.1. of this award term to www.fsrs.gov.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. What to report. You must report the information about each obligating action that the submission instructions posted at www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if --

i. the total Federal funding authorized to date under this award is \$25,000 or more;

ii. in the preceding fiscal year, you received--

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration Central Contractor Registration/System for Award Management profile available at www.sam.gov.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if --

i. in the subrecipient's preceding fiscal year, the subrecipient received--

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward.

For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

1. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards; and
- ii. The total compensation of the five most highly compensated executives of any subrecipient

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization;
- iv. A domestic or foreign for-profit organization;
- v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

- i. Receives a subaward from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. *Salary and bonus*.
- ii. *Awards of stock, stock options, and stock appreciation rights*. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. *Earnings for services under non-equity incentive plans*. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. *Change in pension value*. This is the change in present value of defined benefit and actuarial pension plans.
- v. *Above-market earnings on deferred compensation which is not tax-qualified*.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the

employee, perquisites or property) for the executive exceeds \$10,000.

16. ADVANCE METHOD OF PAYMENT

In accordance with EPA regulations, the recipient is authorized to receive advance payments under this agreement, provided that the recipient takes action to minimize the time elapsing between the transfer of funds from EPA and the disbursement of those funds. The recipient shall request Federal payments by completing the EPA Payment Requests Form (EPA Form 190-F-04-001) and faxing it to the Las Vegas Finance Center at 702-798-2423, or by email: LVFC-grants@epa.gov. This form can be found at www.epa.gov/ogd/forms/forms.htm.

Programmatic Conditions

All Programmatic Conditions to the original award, CS36000112-0, remain in effect with the following exceptions:

Programmatic Condition No. 1 is expanded as follows:

1. AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP)

The New York State Department of Environmental Conservation (NYSDEC), acting on behalf of the State of New York, agrees to accept payment from the United States Environmental Protection Agency (EPA) with funds to be made available from the FY 2012 Title VI allotment pursuant to the Clean Water Act, as amended, (the Act), in accordance with the below payment schedule established under Section 601(b) of the Act and will deposit all such payments into the State Revolving Fund (SRF) in accordance with Title VI. Payments, cash draws and disbursements are defined and in accordance with the Initial Guidance for the State Revolving Fund pursuant to 40 CFR Part 35 Subpart K and the Operating Agreement.

As per EPA's publication, EPA 430/09-88-009, dated July 1988, entitled, "Letter of Credit, How is it Used in EPA's State Revolving Fund Program", a payment in the SRF Program is an action by EPA to increase the amount of funds available for cash draw in the Letter of Credit (i.e. the ceiling). Through a payment, the EPA makes funds available to the State up to the amount of the capitalization grant. A payment is not a transfer of cash to the State but only an authorization making funds available for transfer to the State when a cash draw request is submitted. A payment schedule, indicating the timing and size of the payment or payments to be made will be entered into between EPA and the State. It will be based on the State's projection of binding commitments; the rules for cash draws and the use of the funds.

In consideration of the above, payment from the ASAP shall be made in accordance with the following schedule. Future cash draws may not exceed the amount shown below:

\$1,204,222 (projects) September, 2012*

*** Upon receipt and acceptance of Grant Agreement.**


Programmatic Condition No. 16 is added to your agreement:

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16. FFY 2013 INTENDED USE PLAN

The Draft Federal Fiscal Year 2013 New York State Clean Water State Revolving Fund (CWSRF) for Water Pollution Control Intended Use Plan (IUP) must be amended to include the additional reprogrammed Construction Grants (CG) Funds made available under this amendment.

NOTE: Programmatic Condition No.14 entitled "Amended Intended Use Plan," has been satisfied.

	U.S. ENVIRONMENTAL PROTECTION AGENCY Assistance Amendment	GRANT NUMBER (FAIN): 36000112		DATE OF AWARD
		MODIFICATION NUMBER: 1		09/25/2012
		PROGRAM CODE: CS		MAILING DATE
		TYPE OF ACTION Augmentation: Increase		10/02/2012
PAYMENT METHOD: Advance		ACH# 20040		
RECIPIENT TYPE: State		Send Payment Request to: EPA, Las Vegas Finance Center		
RECIPIENT:		PAYEE:		
NYS Dept of Environmental Conservation 625 Broadway Albany, NY 12233-5010 EIN: 14-6013200		NYS Dept of Environmental Conservation 625 Broadway Albany, NY 12233-5010		
PROJECT MANAGER		EPA PROJECT OFFICER		EPA GRANT SPECIALIST
Michael Giovannone 625 Broadway Albany, NY 12233-5010 E-Mail: "Michael Giovannone" <mxgiovann@gw.dec.state.ny.us> Phone: 518-402-9376		Jane Leu 290 Broadway, CWD/DO New York, NY 10007-1866 E-Mail: Leu.Jane@epamail.epa.gov Phone: 212-637-3815		Yvette MarCardona Grants and Audit Mgt Branch, OPM/GAMB E-Mail: MarCardona.Yvette@epa.gov Phone: 212-637-3409
PROJECT TITLE AND EXPLANATION OF CHANGES NYSDEC-CWSRF SUPPLEMENTAL FUNDING This amendment increases the federal share of the agreement by \$1,204,222 from \$156,001,000 to \$157,205,222; this action further revises the approved recipient share to \$31,441,044. This action is taken in accordance with Governor Cuomo's request, dated June 22, 2011, to transfer Construction Grant Reserve Funds which have become available thru dispute settlements, to the Clean Water State Revolving Fund. Administrative Conditions Nos. 2, 5, 9, 13, 14 and 16 are revised and Programmatic Condition No. 1 has been revised and No. 16 has been added. All other Administrative and Programmatic Conditions remain in effect.				
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ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE		
ORGANIZATION / ADDRESS		ORGANIZATION / ADDRESS		
Grants and Audit Management Branch 290 Broadway, 27th Floor New York, NY 10007-1866		U.S. EPA, Region 2 Clean Water Division 290 Broadway New York, NY 10007-1866		
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY				
Digital signature applied by EPA Award Official Donna J. Vizian - Assistant Regional Administrator for Policy and Management				DATE 09/25/2012
AFFIRMATION OF AWARD BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION				
SIGNATURE	TYPED NAME AND TITLE Joseph Martens, Commissioner			DATE

CS - 36000112 - 1 Page 2

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
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Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
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Fiscal									
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13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$1,204,222
15. Total EPA Amount Awarded To Date	\$157,205,222

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B) Final Federal Financial Report

At the end of the project, the recipient must submit a final Federal Financial Report to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at <http://www.epa.gov/ocfo/financeservices/forms.htm>. All FFRs must be submitted to the Las Vegas Finance Center:

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
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The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 30.62 if the recipient does not comply with this term and condition.

C) Closeout

The Administrative Closeout Phase for this grant will be initiated with the submission of a "final" FFR. At that time, the recipient must submit the following forms/reports to the EPA Region 2 Grants and Audit Management Branch, if applicable:

- Federally Owned Property Report
- An Inventory of all Property Acquired with federal funds
- Contractor's or Grantee's Invention Disclosure Report (EPA Form 3340-3)

Additionally, the recipient's Final Request for Payment should be submitted to the LVFC.

5. EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE

If a no cost time extension is necessary to extend the period of availability of funds (budget period), the recipient must submit a written request, including a justification as to why additional time is needed and an estimated date of completion to the EPA prior to the budget/project period expiration dates. The extension request should be submitted to the EPA, Grants and Audit Management Branch using one of the following options: email to Region2_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. An interim FFR (SF-425) covering all expenditures and obligations to date, must be emailed or faxed to

the Las Vegas Finance Office at LVFC-grants@epa.gov or 702-798-2423 or sent to the address below. To expedite processing of your request, please submit a courtesy copy of the interim FFR to the Grants and Audit Management Branch along with your extension request. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119

or by Fax to: 702-798-2423

9. SUSPENSION AND DEBARMENT

Recipients shall fully comply with Subpart C of 2 CFR Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business With Other Persons," as implemented and supplemented by 2 CFR Part 1532. Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipients may access suspension and debarment information at <http://www.sam.gov>. This system allows recipients to perform searches determining whether an entity or individual is excluded from receiving Federal assistance. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

13. DUNS AND CCR REQUIREMENTS

Central Contractor Registration and Universal Identifier Requirements.

A. Requirement for Central Contractor Registration (CCR). Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3. Entity as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

- tribe;
- a. A Governmental organization, which is a State, local government, or Indian tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization; and
 - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward

14. SUBAWARD REPORTING AND COMPENSATION

I. Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to www.fsrs.gov.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if –

- i. the total Federal funding authorized to date under this award is \$25,000 or more;

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration Central Contractor Registration/System for Award Management profile available at www.sam.gov.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if --

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

1. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any subrecipient

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization;
- iv. A domestic or foreign for-profit organization;
- v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

- i. Receives a subaward from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17.CFR 229.402(c)(2)):

- i. *Salary and bonus* .
- ii. *Awards of stock, stock options, and stock appreciation rights* . Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. *Earnings for services under non-equity incentive plans* . This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. *Change in pension value*. This is the change in present value of defined benefit and actuarial pension plans.
- v. *Above-market earnings on deferred compensation which is not tax-qualified* .
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

16. ADVANCE METHOD OF PAYMENT

In accordance with EPA regulations, the recipient is authorized to receive advance payments under this agreement, provided that the recipient takes action to minimize the time elapsing between the

transfer of funds from EPA and the disbursement of those funds. The recipient shall request Federal payments by completing the EPA Payment Requests Form (EPA Form 190-F-04-001) and faxing it to the Las Vegas Finance Center at 702-798-2423, or by email: LVFC-grants@epa.gov. This form can be found at www.epa.gov/ogd/forms/forms.htm.

Programmatic Conditions

All Programmatic Conditions to the original award, CS36000112-0, remain in effect with the following exceptions:

Programmatic Condition No. 1 is expanded as follows:

1. AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP)

The New York State Department of Environmental Conservation (NYSDEC), acting on behalf of the State of New York, agrees to accept payment from the United States Environmental Protection Agency (EPA) with funds to be made available from the FY 2012 Title VI allotment pursuant to the Clean Water Act, as amended, (the Act), in accordance with the below payment schedule established under Section 601(b) of the Act and will deposit all such payments into the State Revolving Fund (SRF) in accordance with Title VI. Payments, cash draws and disbursements are defined and in accordance with the Initial Guidance for the State Revolving Fund pursuant to 40 CFR Part 35 Subpart K and the Operating Agreement.

As per EPA's publication, EPA 430/09-88-009, dated July 1988, entitled, "Letter of Credit, How is it Used in EPA's State Revolving Fund Program", a payment in the SRF Program is an action by EPA to increase the amount of funds available for cash draw in the Letter of Credit (i.e. the ceiling). Through a payment, the EPA makes funds available to the State up to the amount of the capitalization grant. A payment is not a transfer of cash to the State but only an authorization making funds available for transfer to the State when a cash draw request is submitted. A payment schedule, indicating the timing and size of the payment or payments to be made will be entered into between EPA and the State. It will be based on the State's projection of binding commitments, the rules for cash draws and the use of the funds.

In consideration of the above, payment from the ASAP shall be made in accordance with the following schedule. Future cash draws may not exceed the amount shown below:

\$1,204,222 (projects) September, 2012*

*** Upon receipt and acceptance of Grant Agreement.**

Programmatic Condition No. 16 is added to your agreement:

T

16. FFY 2013 INTENDED USE PLAN

The Draft Federal Fiscal Year 2013 New York State Clean Water State Revolving Fund (CWSRF) for Water Pollution Control Intended Use Plan (IUP) must be amended to include the additional reprogrammed Construction Grants (CG) Funds made available under this amendment.

NOTE: Programmatic Condition No.14 entitled "Amended Intended Use Plan," has been satisfied.

Acceptance

New York State Department of Environmental Conservation
Division of Management & Budget Services, 10th Floor
625 Broadway, Albany, New York 12233-5010
Phone: (518) 402-9228 • Fax: (518) 402-9023
Website: www.dec.ny.gov



Joe Martens
Commissioner

Ms. Judith Enck
Regional Administrator
U.S. Environmental Protection Agency
Region II Office
290 Broadway
New York, New York 10007-1866

AUG 3 2012

Attention: Mr. Roch Baamonde, Chief
Grants & Contract Management Branch

Re: New York Clean Water State Revolving Fund
Capitalization Grant
CS36000112

Dear Ms. Enck:

I am pleased to accept the Federal Fiscal Year (FFY) 2012 Capitalization Grant award of \$156,001,000 for the New York State Clean Water State Revolving Fund (CWSRF). These monies will enable the financing of many additional water quality protection projects.

While I have executed the 2012 Grant Agreement and confirm our acceptance, I would like EPA to consider making the following modifications;

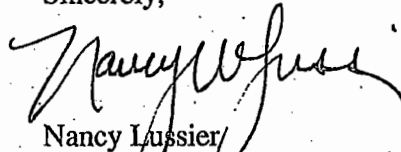
- The Project Manager should be identified as:
 - o Timothy P. Burns, P.E.
625 Broadway
Albany, NY 12207-2997
timothy.burns@efc.ny.gov
(518) 402-7396
- The requirements presented in Section 1 of the Administrative Conditions, "Utilization of Small, Minority, and Women's Business Enterprises", apply only to projects assisted with funds made available by the Capitalization Grant. Please refer to EPA memos SRF-98-05 (1/20/98) and SRF-99-03 (11/5/98). Also, under the sub-heading titled "Current Fair Share Objective/Goal (for NYSDEC Agreements)", the parenthetical phrase (for NYSDEC Agreements) should be deleted.

- 23 APR 1997
- One of the requirements presented in Section 15, sub-section 3.a (1), "Additional Subsidization", of the Programmatic Conditions states "Clean Water State Revolving Fund capitalization recipients agree to use at least 5.55 percent, and no more than 8.33 percent of the funds provided by this grant to provide additional subsidization". This condition should read "Clean Water State Revolving Fund capitalization recipients agree to use at least \$8,669,970, and no more than \$13,004,955 of the funds provided by this grant to provide additional subsidization". These values were derived from the EPA Memorandum (Hanlon, Dougherty; dated 3/2/2012) titled "Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2012 Appropriations Affecting the CWSRF and WSRF Programs".

Again, as instructed, we have executed and dated the 2012 Grant Agreement. Rather than return a hard copy we are returning the acceptance via email as a PDF file of the signed 2012 Grant Agreement.

Thank you for your cooperation and assistance with the CWSRF Capitalization Grants.


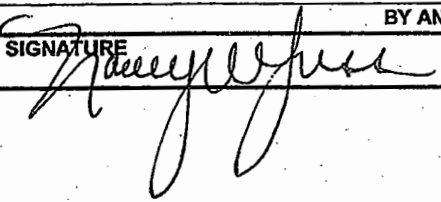
Sincerely,



Nancy Lussier
Director of Management & Budget

Enclosure

c: Mr. Joseph Martens, Commissioner DEC
Mr. Matthew Driscoll, President EFC
Ms. Anita Thompkins, USEPA Region II
Mr. Steven Vida, USEPA Region II
Ms. Jane Leu, USEPA Region II

	U.S. ENVIRONMENTAL PROTECTION AGENCY Grant Agreement		GRANT NUMBER (FAIN): 36000112	DATE OF AWARD
			MODIFICATION NUMBER: 0	06/27/2012
			PROGRAM CODE: CS	MAILING DATE
			TYPE OF ACTION New	07/04/2012
		PAYMENT METHOD: Advance	ACH# 20040	
RECIPIENT TYPE: State		Send Payment Request to: EPA, Las Vegas Finance Center		
RECIPIENT:		PAYEE:		
NYS Dept of Environmental Conservation 625 Broadway Albany, NY 12233-5010 EIN: 14-6013200		NYS Dept of Environmental Conservation 625 Broadway Albany, NY 12233-5010		
PROJECT MANAGER		EPA PROJECT OFFICER	EPA GRANT SPECIALIST	
Michael Giovannone 625 Broadway Albany, NY 12233-5010 E-Mail: "Michael Giovannone" <mxglovan@gw.dec.state.ny.us> Phone: 518-402-9376		Jane Leu 290 Broadway, DEPP/DO New York, NY 10007-1866 E-Mail: Leu.Jane@epamail.epa.gov Phone: 212-637-3815	Yvette MarCardona Grants and Contracts Mgt Branch, OPM/GCMB E-Mail: MarCardona.Yvette@epamail.epa.gov Phone: 212-637-3409	
PROJECT TITLE AND DESCRIPTION NYSEDEC- FFY2012 CWSRF CAP GRANT This agreement is for a capitalization grant which provides funds for New York's Clean Water State Revolving Fund program to provide low interest financing to recipients for costs associated with the planning, design, and construction of eligible water quality improvement and protection projects throughout the State of New York. The objectives are to establish and manage an effective comprehensive Water Pollution and Control Revolving Funds program and to maintain a self-sustaining revolving fund so as to improve and protect water quality and public health.				
BUDGET PERIOD 10/01/2011 - 09/30/2018	PROJECT PERIOD 10/01/2011 - 09/30/2018	TOTAL BUDGET PERIOD COST \$187,201,200.00	TOTAL PROJECT PERIOD COST \$187,201,200.00	
NOTICE OF AWARD Based on your application dated 09/30/2011, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$156,001,000. EPA agrees to cost-share 83.33% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$156,001,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.				
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE		
ORGANIZATION / ADDRESS		ORGANIZATION / ADDRESS		
Grants and Contracts Management Branch 290 Broadway, 27th Floor New York, NY 10007-1866		U.S. EPA, Region 2 Division of Environmental Planning and Protection 290 Broadway New York, NY 10007-1866		
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY				
Digital signature applied by EPA Award Official Donna J. Vizian - Assistant Regional Administrator for Policy and Management				DATE 06/27/2012
AFFIRMATION OF AWARD				
BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION				
SIGNATURE		TYPED NAME AND TITLE		DATE
		Joseph Martens, Commissioner		08/03/12

CS - 36000112 - 0 Page 2

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 156,001,000	\$ 156,001,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$ 31,200,200	\$ 31,200,200
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 187,201,200	\$ 187,201,200

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.458 - Capitalization Grants for State Revolving Fund	Clean Water Act: Secs. 205(m) 601-607	40 CFR PTS 31 & 35 SUBPRT K

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
	1202HE0230	12	E2	022	202B80	4111	12CA		156,001,000
									156,001,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$461,129
2. Fringe Benefits	\$199,530
3. Travel	\$0
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$0
7. Construction	\$0
8. Other	\$186,392,810
9. Total Direct Charges	\$187,053,469
10. Indirect Costs: % Base	\$147,731
11. Total (Share: Recipient <u>16.67</u> % Federal <u>83.33</u> %)	\$187,201,200
12. Total Approved Assistance Amount	\$156,001,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$156,001,000
15. Total EPA Amount Awarded To Date	\$156,001,000

Administrative Conditions

1. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises (MBE/WBE) in procurement under assistance agreements, contained in 40 CFR, Part 33.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

Current Fair Share Objective/Goal (For NYSDEC agreements)

The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000, or more. The New York State Department of Environmental Conservation has negotiated the following, applicable MBE/WBE fair share objectives/goals with EPA as follows:

Construction - Minority Business Enterprise (MBE) Participation Goals:

New York City	17%
Downstate *	10%
Upstate	9%

Construction - Women Business Enterprise (WBE) Participation Goals:

New York City	8%
Downstate *	6%
Upstate	5%

Non-Construction Minority and Women Business Enterprise (MBE/WBE) Participation Goals:
(For all other professional and contractual services; supplies and equipment)

Combined MBE/WBE statewide 10%

* The counties included in the downstate area are as follows: Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan, Ulster, and Westchester.

Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404

If the recipient has not yet negotiated its MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

Objective/Goals of Loan Recipients

As a recipient of an EPA financial assistance agreement to capitalize revolving loan funds, the recipient agrees to either apply its own fair share objectives negotiated with EPA to identified loans using a substantially similar relevant geographic market, or negotiate separate fair share objectives with its identified loan recipients. These separate objectives/goals must be based on demonstrable evidence of the availability of MBEs and WBEs in accordance with 40 CFR, Part 33, Subpart D.

The recipient agrees that if procurements will occur over more than one year, the recipient may

choose to apply the fair share objective in place either for the year in which the identified loan is awarded or for the year in which the procurement action occurs. The recipient must specify this choice in the financial assistance agreement, or incorporate it by reference therein.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award and continuing until the project is completed. **Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.** The reporting period is semiannual, with reporting periods ending March 31st and September 30th. The reports must be submitted within 30 days of the end of the semiannual reporting periods, **April 30th and October 30th.**

Recipients of financial assistance agreements that capitalize revolving loan programs agree to require entities receiving identified loans to submit their MBE/WBE participation reports on a semiannual basis to the financial assistance agreement recipient, rather than to EPA.

Reports should be sent to Michele Junker, the Region 2 DBE Coordinator. Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at <http://www.epa.gov/osbp/grants.htm>.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302. The recipient also agrees to ensure that recipients of identified loans also comply with provisions of 40 CFR, Section 33.302.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

2. FEDERAL FINANCIAL REPORTS/GRANT CLOSEOUT

A) Interim Federal Financial Reports (FFRs)

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit an interim annual Federal Financial Report (SF-425) to EPA no later than 90 calendar days following each anniversary of the start date of the agreement. The FFR must be faxed to the Las Vegas Finance Office at 702-798-2423 or sent to the address below. A courtesy copy of the interim FFR can be submitted to the Grants and Contracts Management Branch using one of the following options: email to Region2_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

B) Final Federal Financial Report

At the end of the project, the recipient must submit a final Federal Financial Report to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at <http://www.epa.gov/ocfo/finservices/forms.htm>. All FFRs must be submitted to the Las Vegas Finance Center:

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119

or by Fax to: 702-798-2423.

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 31.43 if the recipient does not comply with this term and condition.

C) Closeout

The Administrative Closeout Phase for this grant will be initiated with the submission of a "final" FFR. At that time, the recipient must submit the following forms/reports to the EPA Region 2 Grants and Contracts Management Branch, if applicable:

- Federally Owned Property Report
- An Inventory of all Property Acquired with federal funds
- Contractor's or Grantee's Invention Disclosure Report (EPA Form 3340-3)

Additionally, the recipient's Final Request for Payment should be submitted to the LVFC.

3. HOTEL-MOTEL FIRE SAFETY

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance (FEMA ID is

currently not required), or to find other information about the Act.

4. MANAGEMENT FEES

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

5. EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE

If a no cost time extension is necessary to extend the period of availability of funds (budget period), the recipient must submit a written request, including a justification as to why additional time is needed and an estimated date of completion to the EPA prior to the budget/project period expiration dates. The extension request should be submitted to the EPA, Grants and Contracts Management Branch using one of the following options: email to Region2_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. An interim FFR (SF-425) covering all expenditures and obligations to date, must also be faxed to the Las Vegas Finance Office at 702-798-2423 or sent to the address below. To expedite processing of your request, please submit a courtesy copy of the interim FFR to the Grants and Contracts Management Branch along with your extension request. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119

6. RECYCLING AND WASTE PREVENTION

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007) and or 40 CFR 30.16, the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

STATE AGENCIES AND POLITICAL SUBDIVISIONS:

In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

7. SINGLE AUDITS

In accordance with OMB Circular A-133, which implements the Single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor, if it expends \$500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit the SF-SAC and a Single Audit Report Package. The recipient **MUST** submit the SF-SAC and a Single Audit Report Package using the Federal Audit Clearinghouse's Internet Data Entry System. Complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>

8. SUBAWARD POLICY

a. The recipient agrees to:

- (1) Establish all subaward agreements in writing;
- (2) Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
- (3) Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
- (4) Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
- (5) Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
- (6) Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
- (7) Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country;
and
- (8) Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at <http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at <http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.

c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

9. SUSPENSION AND DEBARMENT

Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

10. DRUG-FREE WORKPLACE CERTIFICATION

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2

CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=701081165f70316effa8ebf67df73de0&rqn=dv5&view=text&node=2:1.2.11.11.2&idno=2>.

11. REIMBURSEMENT LIMITATION

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its EPA approved budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk.

12. LOBBYING AND LITIGATION

The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

RESTRICTIONS ON LOBBYING

The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

13. DUNS AND CCR REQUIREMENTS

Central Contractor Registration and Universal Identifier Requirements.

A. Requirement for Central Contractor Registration (CCR). Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional

information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business

entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

- a. A Governmental organization, which is a State, local government, or Indian tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;
- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to

OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

14. SUBAWARD REPORTING AND COMPENSATION

I. Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to www.fsrs.gov.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on

November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if —

- i. the total Federal funding authorized to date under this award is \$25,000 or more;
- ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

- i. As part of your registration profile at www.ccr.gov.
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if —

- i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

1. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization;
- iv. A domestic or foreign for-profit organization;
- v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

- i. Receives a subaward from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. *Salary and bonus*.
- ii. *Awards of stock, stock options, and stock appreciation rights*. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. *Earnings for services under non-equity incentive plans*. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in

- favor of executives; and are available generally to all salaried employees.
- iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
- v. *Above-market earnings on deferred compensation which is not tax-qualified.*
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

15. TRAFFICKING IN PERSONS

a. Provisions applicable to a recipient that is a private entity .

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - A. Associated with performance under this award; or
 - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our Agency at 2 CFR 1532.

b. Provision applicable to a recipient other than a private entity . We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR 1532

c. Provisions applicable to any recipient .

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions . For purposes of this award term:

1. "Employee" means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this

award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. "Private entity":

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

ii. Includes:

A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

B. A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

16. ADVANCE METHOD OF PAYMENT

In accordance with EPA regulations, the recipient is authorized to receive advance payments under this agreement, provided that the recipient takes action to minimize the time elapsing between the transfer of funds from EPA and the disbursement of those funds. The recipient shall request Federal payments by completing the EPA Payment Requests Form (EPA Form 190-F-04-001) and faxing it to the Las Vegas Finance Center at 702-798-2423. This form can be found at www.epa.gov/ogd/forms/forms.htm.

17. INDIRECT COST

If the recipient's negotiated rate does not extend through the life of the Assistance Agreement, additional indirect cost rate proposal(s) must be submitted until the full life of the Assistance Agreement is covered by negotiated indirect cost rates. The recipient **will not charge nor claim for reimbursement any indirect costs that are not covered by a negotiated indirect cost rate**. The recipient must submit a copy(ies) of the Indirect Cost Negotiation Agreement(s) to the EPA Regional Office in order to be eligible to claim indirect costs against this Assistance Agreement.

Programmatic Conditions

1. AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP)

The New York State Department of Environmental Conservation (NYSDEC), acting on behalf of the State of New York, agrees to accept payment from the United States Environmental Protection Agency (EPA) with funds to be made available from the FY 2012 Title VI allotment pursuant to the Clean Water Act, as amended, (the Act), in accordance with the below payment schedule established under Section 601(b) of the Act and will deposit all such payments into the State Revolving Fund (SRF) in accordance with Title VI. Payments, cash draws and disbursements are defined and in accordance with the Initial Guidance for the State Revolving Fund pursuant to 40 CFR Part 35 Subpart K and the Operating Agreement.

As per EPA's publication, EPA 430/09-88-009, dated July 1988, entitled, "Letter of Credit, How is it Used in EPA's State Revolving Fund Program", a payment in the SRF Program is an action by EPA to increase the amount of funds available for cash draw in the Letter of Credit (i.e. the ceiling). Through a payment, the EPA makes funds available to the State up to the amount of the capitalization grant. A payment is not a transfer of cash to the State but only an authorization making funds available for transfer to the State when a cash draw request is submitted. A payment schedule, indicating the timing and size of the payment or payments to be made will be entered into between EPA and the State. It will be based on the State's projection of binding commitments, the rules for cash draws and the use of the funds.

In consideration of the above, payment from the ASAP shall be made in accordance with the following schedule. Future cash draws may not exceed the amount shown below:

\$ 6,240,040 (Administration) June, 2012***

\$149,760,960 (projects) June, 2012***

*** Upon receipt and acceptance of Grant Agreement.**

****Administration Costs:** Under Section 603(d)(7), money in the SRF maybe used for the reasonable costs of administering the Fund, provided that the amount does not exceed 4% of all grant awards to such fund under this title. Under this agreement, the total Administration costs requested is \$6,240,040 of NYSDEC's allowable 4% of Administration costs. The remaining 96%, \$149,760,960, is currently applied to the Project costs.

2. CASH DRAW REQUIREMENTS

The NYSDEC agrees to the following conditions in accepting this Grant Agreement under the ASAP method of financing:

- (a) Cash draws made pursuant to 40 CFR 35.3160(b)(2) must be disbursed to refinancing recipients within three days of OSC cash draw.
- (b) All other cash draws will be made only to meet immediate disbursement needs. The three day disbursement requirement is in accordance with the ASAP Payment System.
- (c) NYSDEC shall provide timely reporting of cash disbursements and balances as required by the ASAP Manual.

3. GENERAL ADMINISTRATIVE REQUIREMENTS

NYSDEC agrees pursuant to 40 CFR Part 35, Subpart K, to administer the State Revolving Fund program in accordance with the terms, agreements, assurances and representations made within the Operation Agreement, the Intended Use Plan and the original application for Federal assistance dated September 30, 2011. The scopes of work for this Grant shall be the projects listed in the FY 2012 Intended Use Plan, dated November, 2011.

4. PROGRAM INCOME/ADMINISTRATIVE FEES

In accordance with 40 CFR §31.25(g)(2), the recipient is authorized to add program income generated under this agreement to the funds committed to the grant agreement by EPA and the grantee. Fees classified as program income are authorized to be used for eligible CWSRF project assistance, administration of the CWSRF program and for State Match. In addition to the purposes authorized for program income fees, fees classified as non-program income may be used for various general water quality program purposes. All fees shall be audited annually and reported on in both the Intended Use Plan and the Annual Report.

5. STATE MATCH

In accordance with 40 CFR §35.3135(b), NYSDEC shall provide at least 20 percent matching share of the Federal funds awarded. The NYSDEC must provide its proportional cash match at the time it draws Federal funds unless NYSDEC draws all of its match fund before drawing any Federal funds.

6. PRE-AWARD COSTS

NYSDEC may charge pre-award costs (both Federal and non-Federal matching shares) incurred

from the beginning of the funding period established in the grant agreement (start date: 10/1/2011) provided that such costs were contained in the approved application. The pre-award costs must be in conformance with the requirements set forth in OMB Circular A-87 and with applicable Agency regulations, policies and guidelines.

7. PAYMENT TO INDIVIDUAL CONSULTANTS

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2012, the limit is \$596.00 per day and \$74.50 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j) or 30.27(b).

8. CLEAN WATER NATIONAL INFORMATION MANAGEMENT SYSTEM (CWNIMS)

NYSDEC agrees to enter data, as required by EPA to the Clean Water National Information Management System (CWNIMS). EPA agrees to provide technical assistance to the State in its use of the CWNIMS as a management information system.

9. FOOD AND REFRESHMENTS

Unless the event(s) and all of its components (i.e., receptions, banquets and other activities that take place after normal business hours) are described in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops, and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

- (1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
- (2) A description of the purpose, agenda, location, length and timing for the event.
- (3) An estimated number of participants in the event and a description of their roles.

Recipients may address questions about whether costs for light refreshments, and meals for events are allowable to the recipient's EPA Project Officer. However, the Agency Award Official or Grant Management Officer will make final determinations on allowability. Agency policy prohibits the use of EPA funds for receptions, banquets and similar activities that take place after normal business hours unless the recipient has provided a justification that has been expressly approved by EPA's Award Official or Grants Management Officer.

Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.11)

10. SUFFICIENT PROGRESS

EPA may terminate the assistance agreement for failure of the recipient to make sufficient progress so as to reasonably ensure completion of the project within the project period, including any extensions. EPA will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period, and/or the availability of funds necessary to complete the project.

11. PURCHASE OF COMPUTER SOFTWARE AND HARDWARE

NYSDEC shall not incur any costs, with a unit cost in excess of \$5,000, associated with the purchase of computer software or hardware under this agreement until the required specifications and justifications for such equipment are submitted to and approved by the EPA Project Officer.

12. EQUIPMENT

For any items of equipment costing \$5,000 or more, a justification as to the need for purchasing the equipment is to be included and the EPA Project Officer must approve the planned purchase before such costs can properly be charged to the grant.

13. DISPOSITION OF EQUIPMENT AND SUPPLIES

NYSDEC shall comply with the disposition of any equipment and supplies approved under this grant in accordance with 40 CFR 31.32 and 31.33.

14. Amended IUP

NYSDEC agrees to submit an amended Intended Use Plan (IUP), adjusted to reflect the final FY 2012 allotment and requirements from the "Procedures for Implementing Certain Provisions of EPA's FFY 2012 Appropriation Affecting the CWSRF and DWSRF Programs" dated March 2, 2012. No Federal funds shall be drawn until the IUP is approved by the USEPA Region 2 Project Officer.

15. Implementing Provisions of EPA's Fiscal Year 2012 Appropriation Affecting the Clean Water and Drinking Water State Revolving Fund Programs.

1. **CWSRF/DWSRF Benefits Reporting Requirement:** The recipient of funds for the State Revolving Funds from P.L. 112-74, Consolidated Appropriations Act, 2012, agrees to comply with all requests for data related to the use of the funds under Subchapter VI of the Clean Water Act (CWA) or Section 1452 of the Safe Drinking Water Act (SDWA), and to report all uses of the funds no less than quarterly, as EPA specifies for the CWSRF Benefits Reporting database and the Drinking Water Project Benefits Reporting database. This reporting shall include but not be limited to data with respect to compliance with the Green Project Reserve and the DWSRF discretionary Green Program and additional subsidization requirements as specified in the Consolidated Appropriations Act, 2012 and the Joint Explanatory Statement, and as outlined in the FY 2012 Procedures document, and other data as necessary to carry out the authorities cited in this Grant Condition.

2. **Environmental Results:** In accordance with 40 CFR 31.40, 40 CFR 35.3165, and 40 CFR 35.3570, the recipient agrees to provide in its Annual Report information regarding key project characteristics, milestones, and environmental/public health protection results in the following areas:
 - 1) achievement of the outputs and outcomes established in the Intended Use Plan;
 - 2) the reasons for delays if established outputs or outcomes were not met;
 - 3) any additional pertinent information on environmental results;
 - 4) compliance with the Green Project Reserve requirement as outlined in the FY 2012 Procedures document for the CWSRF, and for the DWSRF program, whether the State funded green projects, and what criteria were used; and
 - 5) compliance with the additional subsidization requirement as described in the FY 2012 Procedures document.

3. **Additional Subsidization:**
Preamble:

The FY 2012 Appropriation to the CWSRF and DWSRF programs requires that a portion of the capitalization grant funds be used to provide additional subsidization, while relying on the purposes of the Funds in their underlying acts.

The application of the additional subsidies -- in the form in which they are authorized in the

FY 2012 Appropriations Act – to the base SRF programs raises important issues for the underlying SRF programs. While the DWSRF program has since its inception offered discretion to States to provide additional subsidization, that authority was closely circumscribed by requirements that communities assisted meet the State's definition of "disadvantaged," and that the subsidies provided in any year could not exceed 30 percent of the capitalization grant. In contrast, the FY 2012 Appropriations Act requires States to provide not less than 20 percent and not more than 30 percent of the amount of their DWSRF capitalization grants as additional subsidies. For the CWSRF, not less than 20 percent and not more than 30 percent of the States total capitalization grants that exceed \$1,000,000,000 must be used for additional subsidies. For both programs, additional subsidies can be provided to any eligible recipient of SRF assistance, although priority for additional subsidies should be given to communities that could not otherwise afford eligible projects or which are defined by the State as disadvantaged consistent with Section IV. B. of the 2012 procedures.

Under these circumstances, in which a large amount of base program capitalization grant funds will not revolve, it is prudent to include additional guidance in the capitalization agreements with States that ensure that the subsidies are funding infrastructure that is sustainable (not enabling the expansion of centralized infrastructure to accommodate growth while failing to adequately repair, replace, and upgrade infrastructure in existing communities which are not otherwise able to afford such projects). Section 602(a) of the CWA and section 1452(a)(3)(A)(i) of SDWA gives the authority to add such specifications to the capitalization grant. CWA Section 602(a) specifies that the "State shall enter into an agreement with the Administrator which shall include but not be limited to the specifications set forth in subsection (b)...." SDWA Section 1452(g)(3)(A) authorizes EPA to publish guidance "to ensure that each state commits and expends funds allotted to the State under this section as efficiently as possible." Therefore, EPA is adding a grant condition to all FY 2012 CWSRF and DWSRF capitalization grants.

a. The recipient agrees to use funds provided by this grant to provide additional subsidization in the form of principal forgiveness, negative interest rate loans, or grants, in accordance with P.L. 112-10 as follows:

- (1) Clean Water State Revolving Fund capitalization recipients agree to use at least 5.55 percent, and no more than 8.33 percent of the funds provided by this grant to provide additional subsidization.
- (2) Drinking Water State Revolving Fund capitalization grant recipients agree to use between 20 and 30 percent of the funds provided by this grant to provide additional subsidization.

b. Priority for additional subsidies should be given to communities that could not otherwise afford such projects or that are defined by the State as disadvantaged. To further ensure sustainability of eligible projects receiving additional subsidies, these subsidies should be directed to:

- 1) repair, replacement, and upgrade of infrastructure in existing communities;
- 2) investigations, studies, or plans that improve the technical, financial and managerial capacity of the assistance recipient to operate, maintain, and replace financed infrastructure; and/or
- 3) preliminary planning, alternatives assessment and eligible capital projects that reflect the full life cycle costs of infrastructure assets, conservation of natural resources, and alternative approaches to integrate natural or "green" systems into the built environment. The recipient agrees to provide in its Annual Report an explanation as to how they did or did not address this provision.

4. **Green Project Reserve (GPR):** For the CWSRF, the recipient agrees to make a timely and concerted good faith solicitation for projects that address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. A good faith solicitation must be open to all GPR eligible projects in each of the four GPR categories. The State's annual open solicitation for projects will be deemed sufficient for these purposes as long as that solicitation was open to all GPR eligible projects in each of the four GPR categories. The recipient agrees to include in its IUP such qualified projects, or components of projects, that total an amount at least equal to 10% of its capitalization grant. The state must document the GPR solicitation process in its IUP and Annual Report and explain, if

applicable, why GPR projects totaling at least 10 percent of the capitalization grant were not able to be funded. Any State not meeting the 10 percent requirement must outline in the Annual Report how they will expand their GPR solicitation for the following year.

5. **Wage Rate Requirements:** CWSRF: The recipient agrees to include in all agreements to provide assistance for the construction of treatment works carried out in whole or in part with such assistance made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33U.S.C. 1381 et seq.), or with such assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both, a term and condition requiring compliance with the requirements of section 513 of that Act (33 U.S.C. 1372) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for the construction of treatment works carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as attached hereto entitled "Wage Rate Requirements Under FY 2012 Appropriation." This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

July 5, 2012

VIA E-MAIL

Agreement No. CS36000112-0

Joseph Martens
Commissioner
New York State Department of
Environmental Conservation
625 Broadway
Albany, New York 12233-5022

Attention: Federal Grants

Subject: **Clean Water State Revolving Fund Capitalization Grant Award
Fiscal Year 2012**

Dear Commissioner Martens:

I am pleased to offer to the New York State Department of Environmental Conservation (NYSDEC) a grant agreement in the amount of \$156,001,000 to continue the capitalization of the New York State Revolving Fund (SRF). This amount represents the total allotment of Fiscal Year 2012 funds available to New York State and is based on your application dated September 30, 2011. Additionally, the project/budget period approved for this agreement is October 1, 2011 through September 30, 2018.

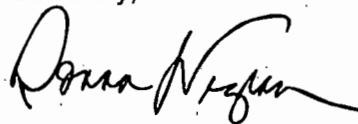
Your attention is directed to the terms and conditions contained in the award document, particularly, Programmatic Condition No. 1 which includes the payment schedule for \$156,001,000. Additionally, the FFY 2012 Intended Use Plan (IUP) dated November, 2011 is conditionally approved. The IUP must be amended to address requirements from the EPA 2012 CWSRF/DWSRF Program Guidance dated March 2, 2012.

You have the option of either emailing your signed agreement to Region2_GrantApplicationBox@epa.gov or mailing it to:
Roch Baamonde, Chief
Grants & Contracts Management Branch
U.S. EPA Region 2
290 Broadway, 27th Floor
New York, NY 10007

All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot be accepted. Also, be advised that any electronic submissions exceeding 15 Megabytes must be mailed.

We look forward to an early acceptance.

Sincerely,



Donna J. Vizian
Assistant Regional Administrator
for Policy and Management

Enclosures

cc: Nancy Lussier, NYSDEC
Director of Management and Budget

Matthew Driscoll, President
New York State Environmental Facilities Corporation (NYSEFC)

bcc: Timothy Burns, NYSEFC
William Brizzell, NYSEFC
David Bradley, NYSEFC
Steve Vida, DEPP-WPB-SRF TEAM
Jane Leu, DEPP-WPB-SRF TEAM
file copy CS360001-12



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

July 5, 2012

VIA E-MAIL

Agreement No. CS36000112-0

Joseph Martens
Commissioner
New York State Department of
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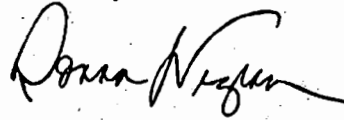
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Donna J. Vizian
Assistant Regional Administrator
for Policy and Management

Enclosures

cc: Nancy Lussier, NYSDEC
Director of Management and Budget

Matthew Driscoll, President
New York State Environmental Facilities Corporation (NYSEFC)

bcc: Timothy Burns, NYSEFC
William Brizzell, NYSEFC
David Bradley, NYSEFC
Steve Vida, DEPP-WPB-SRF TEAM
Jane Leu, DEPP-WPB-SRF TEAM
file copy CS360001-12



U.S. ENVIRONMENTAL PROTECTION AGENCY

Grant Agreement

GRANT NUMBER (FAIN): 36000112	DATE OF AWARD 06/27/2012
MODIFICATION NUMBER: 0	MAILING DATE 07/04/2012
PROGRAM CODE: CS	
TYPE OF ACTION New	
PAYMENT METHOD: Advance	ACH# 20040

RECIPIENT TYPE: State	Send Payment Request to: EPA, Las Vegas Finance Center
RECIPIENT: NYS Dept of Environmental Conservation 625 Broadway Albany, NY 12233-5010 EIN: 14-6013200	PAYEE: NYS Dept of Environmental Conservation 625 Broadway Albany, NY 12233-5010

PROJECT MANAGER Michael Giovannone 625 Broadway Albany, NY 12233-5010 E-Mail: "Michael Giovannone" <mxgiovan@gw.dec.state.ny.us> Phone: 518-402-9376	EPA PROJECT OFFICER Jane Leu 290 Broadway, DEPP/DO New York, NY 10007-1866 E-Mail: Leu.Jane@epamail.epa.gov Phone: 212-637-3815	EPA GRANT SPECIALIST Yvette MarCardona Grants and Contracts Mgt Branch, OPM/GCMB E-Mail: MarCardona.Yvette@epamail.epa.gov Phone: 212-637-3409
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PROJECT TITLE AND DESCRIPTION

NYSDEC- FFY2012 CWSRF CAP GRANT

This agreement is for a capitalization grant which provides funds for New York's Clean Water State Revolving Fund program to provide low interest financing to recipients for costs associated with the planning, design, and construction of eligible water quality improvement and protection projects throughout the State of New York. The objectives are to establish and manage an effective comprehensive Water Pollution and Control Revolving Funds program and to maintain a self-sustaining revolving fund so as to improve and protect water quality and public health.

BUDGET PERIOD 10/01/2011 - 09/30/2018	PROJECT PERIOD 10/01/2011 - 09/30/2018	TOTAL BUDGET PERIOD COST \$187,201,200.00	TOTAL PROJECT PERIOD COST \$187,201,200.00
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NOTICE OF AWARD

Based on your application dated 09/30/2011, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$156,001,000. EPA agrees to cost-share 83.33% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$156,001,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.

ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)	AWARD APPROVAL OFFICE
ORGANIZATION / ADDRESS Grants and Contracts Management Branch 290 Broadway, 27th Floor New York, NY 10007-1866	ORGANIZATION / ADDRESS U.S. EPA, Region 2 Division of Environmental Planning and Protection 290 Broadway New York, NY 10007-1866

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Digital signature applied by EPA Award Official Donna J. Vizian - Assistant Regional Administrator for Policy and Management	DATE 06/27/2012
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AFFIRMATION OF AWARD

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION

SIGNATURE	TYPED NAME AND TITLE Joseph Martens, Commissioner	DATE
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CS - 36000112 - 0 Page 2

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 156,001,000	\$ 156,001,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$ 31,200,200	\$ 31,200,200
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 187,201,200	\$ 187,201,200

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.458 - Capitalization Grants for State Revolving Fund	Clean Water Act: Secs. 205(m) 601-607	40 CFR PTS 31 & 35 SUBPRT K

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	1202HE0230	12	E2	022	202B80	4111	12CA	-	156,001,000
									156,001,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$461,129
2. Fringe Benefits	\$199,530
3. Travel	\$0
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$0
7. Construction	\$0
8. Other	\$186,392,810
9. Total Direct Charges	\$187,053,469
10. Indirect Costs: % Base	\$147,731
11. Total (Share: Recipient <u>16.67</u> % Federal <u>83.33</u> %.)	\$187,201,200
12. Total Approved Assistance Amount	\$156,001,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$156,001,000
15. Total EPA Amount Awarded To Date	\$156,001,000

Administrative Conditions

1. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises (MBE/WBE) in procurement under assistance agreements, contained in 40 CFR, Part 33.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

Current Fair Share Objective/Goal (For NYSDEC agreements)

The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000, or more. The New York State Department of Environmental Conservation has negotiated the following, applicable MBE/WBE fair share objectives/goals with EPA as follows:

Construction - Minority Business Enterprise (MBE) Participation Goals:

New York City	17%
Downstate *	10%
Upstate	9%

Construction - Women Business Enterprise (WBE) Participation Goals:

New York City	8%
Downstate *	6%
Upstate	5%

Non-Construction Minority and Women Business Enterprise (MBE/WBE) Participation Goals: (For all other professional and contractual services; supplies and equipment)

Combined MBE/WBE statewide	10%
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* The counties included in the downstate area are as follows: Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan, Ulster, and Westchester.

Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404

If the recipient has not yet negotiated its MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

Objective/Goals of Loan Recipients

As a recipient of an EPA financial assistance agreement to capitalize revolving loan funds, the recipient agrees to either apply its own fair share objectives negotiated with EPA to identified loans using a substantially similar relevant geographic market, or negotiate separate fair share objectives with its identified loan recipients. These separate objectives/goals must be based on demonstrable evidence of the availability of MBEs and WBEs in accordance with 40 CFR, Part 33, Subpart D.

The recipient agrees that if procurements will occur over more than one year, the recipient may choose to apply the fair share objective in place either for the year in which the identified loan is

awarded or for the year in which the procurement action occurs. The recipient must specify this choice in the financial assistance agreement, or incorporate it by reference therein.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award and continuing until the project is completed. **Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.** The reporting period is **semiannual**, with reporting periods ending March 31st and September 30th. The reports must be submitted within 30 days of the end of the semiannual reporting periods, **April 30th and October 30th.**

Recipients of financial assistance agreements that capitalize revolving loan programs agree to require entities receiving identified loans to submit their MBE/WBE participation reports on a semiannual basis to the financial assistance agreement recipient, rather than to EPA.

Reports should be sent to Michele Junker, the Region 2 DBE Coordinator. Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at <http://www.epa.gov/osbp/grants.htm>.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302. The recipient also agrees to ensure that recipients of identified loans also comply with provisions of 40 CFR, Section 33.302.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to

create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

2. FEDERAL FINANCIAL REPORTS/GRANT CLOSEOUT

A) Interim Federal Financial Reports (FFRs)

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit an interim annual Federal Financial Report (SF-425) to EPA no later than 90 calendar days following each anniversary of the start date of the agreement. The FFR must be faxed to the Las Vegas Finance Office at 702-798-2423 or sent to the address below. A courtesy copy of the interim FFR can be submitted to the Grants and Contracts Management Branch using one of the following options: email to Region2_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

B) Final Federal Financial Report

At the end of the project, the recipient must submit a final Federal Financial Report to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at <http://www.epa.gov/ocfo/finservices/forms.htm>. All FFRs must be submitted to the Las Vegas Finance Center:

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119

or by Fax to: 702-798-2423.

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 31.43 if the recipient does not comply with this term and condition.

C) Closeout

The Administrative Closeout Phase for this grant will be initiated with the submission of a "final" FFR. At that time, the recipient must submit the following forms/reports to the EPA Region 2 Grants and Contracts Management Branch, if applicable:

- Federally Owned Property Report
- An Inventory of all Property Acquired with federal funds
- Contractor's or Grantee's Invention Disclosure Report (EPA Form 3340-3)

Additionally, the recipient's Final Request for Payment should be submitted to the LVFC.

3. HOTEL-MOTEL FIRE SAFETY

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

4. MANAGEMENT FEES

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

5. EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE

If a no cost time extension is necessary to extend the period of availability of funds (budget period), the recipient must submit a written request, including a justification as to why additional time is needed and an estimated date of completion to the EPA prior to the budget/project period expiration dates. The extension request should be submitted to the EPA, Grants and Contracts Management Branch using one of the following options: email to Region2_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. An interim FFR (SF-425) covering all expenditures and obligations to date, must also be faxed to the Las Vegas Finance Office at 702-798-2423 or sent to the address below. To expedite processing of your request, please submit a courtesy copy of the interim FFR to the Grants and Contracts Management Branch along with your extension request. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119

6. RECYCLING AND WASTE PREVENTION

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007) and or 40 CFR 30.16, the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

STATE AGENCIES AND POLITICAL SUBDIVISIONS:

In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

7. SINGLE AUDITS

In accordance with OMB Circular A-133, which implements the Single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor, if it expends \$500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit the SF-SAC and a Single Audit Report Package. **The recipient MUST** submit the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. Complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>

8. SUBAWARD POLICY

a. The recipient agrees to:

- (1) Establish all subaward agreements in writing;
- (2) Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
- (3) Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
- (4) Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
- (5) Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
- (6) Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
- (7) Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
- (8) Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at <http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at <http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.

c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

9. SUSPENSION AND DEBARMENT

Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

10. DRUG-FREE WORKPLACE CERTIFICATION

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E.

Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=701081165f70316effa8ebf67df73de0&rgn=div5&view=text&node=2:1.2.11.11.2&idno=2>.

11. REIMBURSEMENT LIMITATION

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its EPA approved budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk.

12. LOBBYING AND LITIGATION

The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

RESTRICTIONS ON LOBBYING

The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

13. DUNS AND CCR REQUIREMENTS

Central Contractor Registration and Universal Identifier Requirements.

A. Requirement for Central Contractor Registration (CCR). Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).

2. Data Universal Numbering System (DUNS) number means the nine-digit number

established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business

entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

- a. A Governmental organization, which is a State, local government, or Indian tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;
- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you

as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to

OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

14. SUBAWARD REPORTING AND COMPENSATION

I. Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to www.fsr.gov.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at www.fsr.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if --

i. the total Federal funding authorized to date under this award is \$25,000 or more;

ii. in the preceding fiscal year, you received--

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at www.ccr.gov.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if --

i. in the subrecipient's preceding fiscal year, the subrecipient received--

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given

year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

1. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any subrecipient

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization;
- iv. A domestic or foreign for-profit organization;
- v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

- i. Receives a subaward from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. *Salary and bonus*.
- ii. *Awards of stock, stock options, and stock appreciation rights*. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. *Earnings for services under non-equity incentive plans*. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. *Change in pension value*. This is the change in present value of defined benefit and actuarial pension plans.
- v. *Above-market earnings on deferred compensation which is not tax-qualified*.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

15. TRAFFICKING IN PERSONS

a. Provisions applicable to a recipient that is a private entity .

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - A. Associated with performance under this award; or
 - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our Agency at 2 CFR 1532.

b. Provision applicable to a recipient other than a private entity . We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR 1532

c. Provisions applicable to any recipient .

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions . For purposes of this award term:

1. "Employee" means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. "Private entity":
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public

entity, as those terms are defined in 2 CFR 175.25.

ii. Includes:

A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

B. A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

16. ADVANCE METHOD OF PAYMENT

In accordance with EPA regulations, the recipient is authorized to receive advance payments under this agreement, provided that the recipient takes action to minimize the time elapsing between the transfer of funds from EPA and the disbursement of those funds. The recipient shall request Federal payments by completing the EPA Payment Requests Form (EPA Form 190-F-04-001) and faxing it to the Las Vegas Finance Center at 702-798-2423. This form can be found at www.epa.gov/ogd/forms/forms.htm.

17. INDIRECT COST

If the recipient's negotiated rate does not extend through the life of the Assistance Agreement, additional indirect cost rate proposal(s) must be submitted until the full life of the Assistance Agreement is covered by negotiated indirect cost rates. The recipient **will not charge nor claim for reimbursement any indirect costs that are not covered by a negotiated indirect cost rate**. The recipient must submit a copy(ies) of the Indirect Cost Negotiation Agreement(s) to the EPA Regional Office in order to be eligible to claim indirect costs against this Assistance Agreement.

Programmatic Conditions

1. AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP)

The New York State Department of Environmental Conservation (NYSDEC), acting on behalf of the State of New York, agrees to accept payment from the United States Environmental Protection Agency (EPA) with funds to be made available from the FY 2012 Title VI allotment pursuant to the Clean Water Act, as amended, (the Act), in accordance with the below payment schedule established under Section 601(b) of the Act and will deposit all such payments into the State Revolving Fund (SRF) in accordance with Title VI. Payments, cash draws and disbursements are defined and in accordance with the Initial Guidance for the State Revolving Fund pursuant to 40 CFR Part 35 Subpart K and the Operating Agreement.

As per EPA's publication, EPA 430/09-88-009, dated July 1988, entitled, "Letter of Credit, How is it Used in EPA's State Revolving Fund Program", a payment in the SRF Program is an action by EPA to increase the amount of funds available for cash draw in the Letter of Credit (i.e. the ceiling). Through a payment, the EPA makes funds available to the State up to the amount of the capitalization grant. A payment is not a transfer of cash to the State but only an authorization making funds available for transfer to the State when a cash draw request is submitted. A payment schedule, indicating the timing and size of the payment or payments to be made will be entered into between EPA and the State. It will be based on the State's projection of binding commitments, the rules for cash draws and the use of the funds.

In consideration of the above, payment from the ASAP shall be made in accordance with the following schedule. Future cash draws may not exceed the amount shown below:

\$ 6,240,040 (Administration) June, 2012***

\$149,760,960 (projects) June, 2012***

*** Upon receipt and acceptance of Grant Agreement.**

****Administration Costs:** Under Section 603(d)(7), money in the SRF maybe used for the reasonable costs of administering the Fund, provided that the amount does not exceed 4% of all grant awards to such fund under this title. Under this agreement, the total Administration costs requested is \$6,240,040 of NYSDEC's allowable 4% of Administration costs. The remaining 96%, \$149,760,960, is currently applied to the Project costs.

2. CASH DRAW REQUIREMENTS

The NYSDEC agrees to the following conditions in accepting this Grant Agreement under the ASAP method of financing:

- (a) Cash draws made pursuant to 40 CFR 35.3160(b)(2) must be disbursed to refinancing recipients within three days of OSC cash draw.
- (b) All other cash draws will be made only to meet immediate disbursement needs. The three day disbursement requirement is in accordance with the ASAP Payment System.
- (c) NYSDEC shall provide timely reporting of cash disbursements and balances as required by the ASAP Manual.

3. GENERAL ADMINISTRATIVE REQUIREMENTS

NYSDEC agrees pursuant to 40 CFR Part 35, Subpart K, to administer the State Revolving Fund program in accordance with the terms, agreements, assurances and representations made within the Operation Agreement, the Intended Use Plan and the original application for Federal assistance dated September 30, 2011. The scopes of work for this Grant shall be the projects listed in the FY 2012 Intended Use Plan, dated November, 2011.

4. PROGRAM INCOME/ADMINISTRATIVE FEES

In accordance with 40 CFR §31.25(g)(2), the recipient is authorized to add program income generated under this agreement to the funds committed to the grant agreement by EPA and the grantee. Fees classified as program income are authorized to be used for eligible CWSRF project assistance, administration of the CWSRF program and for State Match. In addition to the purposes authorized for program income fees, fees classified as non-program income may be used for various general water quality program purposes. All fees shall be audited annually and reported on in both the Intended Use Plan and the Annual Report.

5. STATE MATCH

In accordance with 40 CFR §35.3135(b), NYSDEC shall provide at least 20 percent matching share of the Federal funds awarded. The NYSDEC must provide its proportional cash match at the time it draws Federal funds unless NYSDEC draws all of its match fund before drawing any Federal funds.

6. PRE-AWARD COSTS

NYSDEC may charge pre-award costs (both Federal and non-Federal matching shares) incurred from the beginning of the funding period established in the grant agreement (start date: 10/1/2011) provided that such costs were contained in the approved application. The pre-award costs must be in conformance with the requirements set forth in OMB Circular A-87 and with applicable Agency regulations, policies and guidelines.

7. PAYMENT TO INDIVIDUAL CONSULTANTS

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2012, the limit is \$596.00 per day and \$74.50 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j) or 30.27(b).

8. CLEAN WATER NATIONAL INFORMATION MANAGEMENT SYSTEM (CWNIMS)

NYSDEC agrees to enter data, as required by EPA to the Clean Water National Information Management System (CWNIMS). EPA agrees to provide technical assistance to the State in its use of the CWNIMS as a management information system.

9. FOOD AND REFRESHMENTS

Unless the event(s) and all of its components (i.e., receptions, banquets and other activities that take place after normal business hours) are described in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops, and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

- (1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
- (2) A description of the purpose, agenda, location, length and timing for the event.
- (3) An estimated number of participants in the event and a description of their roles.

Recipients may address questions about whether costs for light refreshments, and meals for events are allowable to the recipient's EPA Project Officer. However, the Agency Award Official or Grant Management Officer will make final determinations on allowability. Agency policy prohibits the use of EPA funds for receptions, banquets and similar activities that take place after normal business hours unless the recipient has provided a justification that has been expressly approved by EPA's Award Official or Grants Management Officer.

Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.11)

10. SUFFICIENT PROGRESS

EPA may terminate the assistance agreement for failure of the recipient to make sufficient progress so as to reasonably ensure completion of the project within the project period, including any extensions. EPA will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period, and/or the availability of funds necessary to complete the project.

11. PURCHASE OF COMPUTER SOFTWARE AND HARDWARE

NYSDEC shall not incur any costs, with a unit cost in excess of \$5,000, associated with the purchase of computer software or hardware under this agreement until the required specifications and justifications for such equipment are submitted to and approved by the EPA Project Officer.

12. EQUIPMENT

For any items of equipment costing \$5,000 or more, a justification as to the need for purchasing the equipment is to be included and the EPA Project Officer must approve the planned purchase before such costs can properly be charged to the grant.

13. DISPOSITION OF EQUIPMENT AND SUPPLIES

NYSDEC shall comply with the disposition of any equipment and supplies approved under this grant in accordance with 40 CFR 31.32 and 31.33.

14. Amended IUP

NYSDEC agrees to submit an amended Intended Use Plan (IUP), adjusted to reflect the final FY 2012 allotment and requirements from the "Procedures for Implementing Certain Provisions of EPA's FFY 2012 Appropriation Affecting the CWSRF and DWSRF Programs" dated March 2, 2012. No Federal funds shall be drawn until the IUP is approved by the USEPA Region 2 Project Officer.

15. Implementing Provisions of EPA's Fiscal Year 2012 Appropriation Affecting the Clean Water and Drinking Water State Revolving Fund Programs.

1. **CWSRF/DWSRF Benefits Reporting Requirement:** The recipient of funds for the State Revolving Funds from P.L. 112-74, Consolidated Appropriations Act, 2012, agrees to comply with all requests for data related to the use of the funds under Subchapter VI of the Clean Water Act (CWA) or Section 1452 of the Safe Drinking Water Act (SDWA), and to report all uses of the funds no less than quarterly, as EPA specifies for the CWSRF Benefits Reporting database and the Drinking Water Project Benefits Reporting database. This reporting shall include but not be limited to data with respect to compliance with the Green Project Reserve and the DWSRF discretionary Green Program and additional subsidization requirements as specified in the Consolidated Appropriations Act, 2012 and the Joint Explanatory Statement, and as outlined in the FY 2012 Procedures document, and other data as necessary to carry out the authorities cited in this Grant Condition.
2. **Environmental Results:** In accordance with 40 CFR 31.40, 40 CFR 35.3165, and 40 CFR 35.3570, the recipient agrees to provide in its Annual Report information regarding key project characteristics, milestones, and environmental/public health protection results in the following areas:
 - 1) achievement of the outputs and outcomes established in the Intended Use Plan;
 - 2) the reasons for delays if established outputs or outcomes were not met;
 - 3) any additional pertinent information on environmental results;
 - 4) compliance with the Green Project Reserve requirement as outlined in the FY 2012 Procedures document for the CWSRF, and for the DWSRF program, whether the State funded green projects, and what criteria were used; and
 - 5) compliance with the additional subsidization requirement as described in the FY 2012 Procedures document.
3. **Additional Subsidization:**
Preamble:

The FY 2012 Appropriation to the CWSRF and DWSRF programs requires that a portion of the capitalization grant funds be used to provide additional subsidization, while relying on the purposes of the Funds in their underlying acts.

The application of the additional subsidies – in the form in which they are authorized in the FY 2012 Appropriations Act – to the base SRF programs raises important issues for the underlying SRF programs. While the DWSRF program has since its inception offered discretion to States to provide additional subsidization, that authority was closely circumscribed by requirements that communities assisted meet the State's definition of "disadvantaged," and that the subsidies provided in any year could not exceed 30 percent of the capitalization grant. In contrast, the FY 2012 Appropriations Act requires States to provide not less than 20 percent and not more than 30 percent of the amount of their DWSRF capitalization grants as additional subsidies. For the CWSRF, not less than 20 percent and not more than 30 percent of the States total capitalization grants that exceed \$1,000,000,000

must be used for additional subsidies. For both programs, additional subsidies can be provided to any eligible recipient of SRF assistance, although priority for additional subsidies should be given to communities that could not otherwise afford eligible projects or which are defined by the State as disadvantaged consistent with Section IV. B. of the 2012 procedures.

Under these circumstances, in which a large amount of base program capitalization grant funds will not revolve, it is prudent to include additional guidance in the capitalization agreements with States that ensure that the subsidies are funding infrastructure that is sustainable (not enabling the expansion of centralized infrastructure to accommodate growth while failing to adequately repair, replace, and upgrade infrastructure in existing communities which are not otherwise able to afford such projects). Section 602(a) of the CWA and section 1452(a)(3)(A)(i) of SDWA gives the authority to add such specifications to the capitalization grant. CWA Section 602(a) specifies that the "State shall enter into an agreement with the Administrator which shall include but not be limited to the specifications set forth in subsection (b)...." SDWA Section 1452(g)(3)(A) authorizes EPA to publish guidance "to ensure that each state commits and expends funds allotted to the State under this section as efficiently as possible." Therefore, EPA is adding a grant condition to all FY 2012 CWSRF and DWSRF capitalization grants.

a. The recipient agrees to use funds provided by this grant to provide additional subsidization in the form of principal forgiveness, negative interest rate loans, or grants, in accordance with P.L. 112-10 as follows:

(1) Clean Water State Revolving Fund capitalization recipients agree to use at least 5.55 percent, and no more than 8.33 percent of the funds provided by this grant to provide additional subsidization.

(2) Drinking Water State Revolving Fund capitalization grant recipients agree to use between 20 and 30 percent of the funds provided by this grant to provide additional subsidization.

b. Priority for additional subsidies should be given to communities that could not otherwise afford such projects or that are defined by the State as disadvantaged. To further ensure sustainability of eligible projects receiving additional subsidies, these subsidies should be directed to:

- 1) repair, replacement, and upgrade of infrastructure in existing communities;
- 2) investigations, studies, or plans that improve the technical, financial and managerial capacity of the assistance recipient to operate, maintain, and replace financed infrastructure; and/or
- 3) preliminary planning, alternatives assessment and eligible capital projects that reflect the full life cycle costs of infrastructure assets, conservation of natural resources, and alternative approaches to integrate natural or "green" systems into the built environment. The recipient agrees to provide in its Annual Report an explanation as to how they did or did not address this provision.

4. **Green Project Reserve (GPR):** For the CWSRF, the recipient agrees to make a timely and concerted good faith solicitation for projects that address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. A good faith solicitation must be open to all GPR eligible projects in each of the four GPR categories. The State's annual open solicitation for projects will be deemed sufficient for these purposes as long as that solicitation was open to all GPR eligible projects in each of the four GPR categories. The recipient agrees to include in its IUP such qualified projects, or components of projects, that total an amount at least equal to 10% of its capitalization grant. The state must document the GPR solicitation process in its IUP and Annual Report and explain, if applicable, why GPR projects totaling at least 10 percent of the capitalization grant were not able to be funded. Any State not meeting the 10 percent requirement must outline in the Annual Report how they will expand their GPR solicitation for the following year.

5. **Wage Rate Requirements:** CWSRF: The recipient agrees to include in all agreements to provide assistance for the construction of treatment works carried out in whole or in part with such assistance made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.), or with such assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both, a term and condition requiring compliance with the requirements of section 513 of that Act (33 U.S.C. 1372) in all procurement contracts and sub-grants, and require that loan recipients,

procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for the construction of treatment works carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as attached hereto entitled "Wage Rate Requirements Under FY 2012 Appropriation." This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009.